IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1330 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K M TALATI

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ SHRIMALI for MR GIRISH PATEL for Petitioner

MS HARSHA DEVANI, AGP for Respondent No. 1-2

Respondent No. 3 served

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 03/10/2002

ORAL JUDGEMENT

1. This Spl. Civil Application is filed by the petitioner for direction to the respondents to pay the arrears on the basis of the difference between the pay

scale of Rs. 1200 - 1900 and Rs.1500 - 2200 from 15th June, 1982 to 30th April, 1984, and further declaring the decision of the Government to treat the pay scales only notional between the period from 15.6.1982 to 31.12.1985 as unconstitutional, illegal and of no effect. A relief is also claimed restraining the respondent Government from acting, implementing, enforcing and or taking any action in pursuance of the said decision. Rule was issued on 28.2.92. No interim relief was granted.

2. The petitioner was working as Principal of Navjivan Arts and Commerce College, Dahod, from the academic year 1964 to 1971. In the year 1971, the petitioner joined the Bhavans College, Dakor as Principal and continued to work as such till his date of retirement i.e. 30th of April, 1984. Navjivan Arts and Commerce College at Dahod as well as the Bhavans College at Dakor, are the affiliated colleges to the Gujarat University under the Gujarat University Act. The pay scales of the teaching staff in the affiliated colleges of Gujarat University are paid according to UGC pay scales fixed from time to time and as accepted by the Government of India, the State Government and the Gujarat University. By Government Resolution dated 23.2.1976, the pay scales of teaching staff were directed to be revised w.e.f. 1.1.1973. Accordingly lower revised pay scale was fixed at Rs.1200 to 1900, while senior revised pay scale was fixed at Rs. 1500 to 2200. At the first instance the petitioner was not considered by the respondent for entitlement of senior (higher) pay scale of Rs.1500 2200 and he was not included in the list of person getting benefit of senior pay scale. The said decision and the Government Resolution were challenged in this Court in Spl. C.A. No. 546/78 by the petitioners of that Special Civil Application including the present petitioner. By judgment dated 22nd July, 1986, this Court was pleased to declare the resolution dated 23.8.1977 to be ultra vires of the Article 14 of the Constitution. This Court therefore was pleased to quash and set aside the said Resolution. This Court also directed the concerned authorities to decide the matter afresh and evolve a criteria consistent with Article 14 of the Constitution. The fact goes to show that thereafter the Government of Gujarat issued a fresh Resolution dated 1st of July, 1987 laying down new criteria for giving the higher pay scale of Rs. 1500 to 2200 to the teaching staff of the affiliated colleges. The said Resolution is placed at Annexure-A to the petition. Accordingly, the present petitioner was then entitled to the higher pay scale of Rs. 1500- 2200 and

his name appeared at Sl. No.32 of the list of eligible Principals, who were entitled to the higher pay scale.

3. It appears that the trouble started thereafter. It is pertinent to note that though the petitioner was given higher pay scale of Rs.1500 to 2200 and he retired on 10.4.1984, however, the Government vide its Resolution dated 19.4.1988 decided to give higher pay scales of Rs. 1500 to 2500 instead of the earlier higher pay scale of Rs. 1500 to 2200. It was made clear by this Resolution dated 19.4.1988 that the new higher pay scale of Rs. 1500 to 2500 would be paid notionally from 15.6.1982 to 31.1.1985. The said GR is produced at Annexure C on the record.

4. However, the authorities concerned relying on this GR dated 19.4.1988, right from 15th June, 1982 placed the petitioner in the lower scale of Rs.1200-1900. So it happened that right upto 15.6.1982 in pursuance of the Resolution dated 1st July, 1987, the petitioner whose pay as aforesaid, was fixed in higher scale of Rs.1500 to 2200, was reverted in lower scale of Rs. 1200 - 1900 till he retired in 1984 i.e. 30th April, 1984.

5. Therefore, the petitioner has prayed for direction to the respondents to pay the arrears on the basis of difference between Rs. 1200 - 1900 and Rs. 1500 - 2200 from 15.6.1982 to 30.4.1984.

6. Learned Advocate Mr. Manoj Shrimali for learned Senior Counsel Mr. Girish Patel for the petitioner and learned AGP Ms. Harsha Devani for respondents No. 1 and 2 were heard. The rule was served to respondent No.3. The bare reading of Annexure-C clearly indicates that the revised higher pay scale in pursuance of Resolution dated 23.11.1976, which was of Rs.1500 to 2200 was further revised to Rs.1500 to 2500, but the effect of this revision was, as it was made clear by the resolution, that the said scale of Rs.1500 to 2200 would be notional from 15.6.1982 to 31.12.1985. It clearly transpires that there is nothing in the said GR at Annexure-C that the members of the teaching staff who were entitled to higher pay scale of Rs.1500 to 2200, by virtue of Govt. Resolution dated 23.11.1976 were to be reverted to lower scale of Rs. 1200 to 1900. However, even then, the authorities reverted the petitioner to lower scale of Rs. 1200 to 1900 right from 15.6.1982 to 30.4.1984, which is the date of his retirement. Since by virtue of Resolution dated 23.11.1976, the petitioner was found eligible for higher pay scale of Rs. 1500 -2200 till 15.6.1982, there were no legal reason to revert him to

the lower scale of Rs.1200 to 1900 right from 15.6.1982. True it is that as per Annexure-C, the petitioner may not be given the revised pay scale of Rs.1500 to 2500 because upto 31st December,1985, pay was required to be fixed notionally, and in the meantime, on 30.4.1984, the petitioner was retired, but in no case, his pay could be lowered in the scale of Rs. 1200 - 1900, in pursuance of Annexure-C from the scale of Rs. 1500 to 2200. The decision of the authorities is clearly in violation of principle of law, equity and justice. In this view of the matter, the directions sought by the petitioner vide Para 15(A) are required to be issued to the concerned authorities. At the same time, the decision of the Government to treat the pay scales between 15.6.1982 and 31.6.1985 as notional, cannot be declared as unconstitutional and illegal as prayed for by the petitioner. Nothing is shown that the Government was not within its right to specify the period from 15th June, 1982 to 31st December, 1985 as notional in the fixation of higher pay and, therefore, the relief claimed vide para 15(B) of the petition requires to be rejected.

7. In the result, the petition is allowed to the above extent and the respondents are directed to pay to the petitioner the arrears on the basis of difference between the pay scale of Rs.1200 - 1900 and Rs.1500 - 2200 from 15th June, 1982 to 30th April 1984 within a period of two months from the date of receipt of the certified copy of this judgment. Rule is made absolute to the aforesaid extent with no order as to costs.

(J.R. Vora, J.)

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